

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CURTIS ZAMERSKI and RICHARD KOHL,

Plaintiffs,

vs.

TERRENCE L. BODEWES, JAMES MALONEY,
VINCENT FETES, ERNEST BOUCHARD,
THOMAS HERR, DARYL BODEWES,
GEORGE FERRARO and JAMES BIDDLE, SR.,
personally and in their capacities as Trustees
and plan fiduciaries,

Defendants.

TERRENCE L. BODEWES, JAMES MALONEY,
VINCENT FETES, DARYL BODEWES,
JAMES BIDDLE, SR., GEORGE FERRARO and
THOMAS HERR,

Third-Party Plaintiffs,

vs.

ULICO CASUALTY COMPANY,

Third-Party Defendant.

STATE OF NEW YORK)
 : ss.
COUNTY OF ERIE)

R. SCOTT DELUCA, ESQ., being duly sworn, deposes and says:

1. I am an attorney at law duly admitted to practice before this Court and am an associate of the law firm of DAMON & MOREY LLP, attorneys for Defendants/Third-Party

**AFFIDAVIT OF R. SCOTT
DELUCA, ESQ. IN SUPPORT OF
DEFENDANT/THIRD-PARTY
PLAINTIFFS' CROSS-MOTION
FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO
THIRD-PARTY DEFENDANT'S
MOTION FOR
SUMMARY JUDGMENT**

Civil Action No.: 01-CV-0365C

Plaintiffs JAMES BIDDLE, SR. and GEORGE FERRARO [herein “Defendants Biddle and Ferraro”], in the above action.

2. I submit this affidavit in support of Defendants/Third-Party Plaintiffs’ cross-motion for summary judgment and in opposition to Third-Party Defendant Ulico Casualty Company’s motion for summary judgment and have personal knowledge of the facts set forth herein.

3. In preparation for trial in this matter, Defendants Ferraro and Biddle served interrogatories on Third-Party Defendant Ulico Casualty Company [herein “Ulico”]. Ulico responded to these interrogatories on March 30, 2001. A copy of Third-Party Defendant Ulico Casualty Company’s Response to George Ferraro and James Biddle, Sr.’s First Set of Interrogatories is attached hereto as **Exhibit A**.

4. As part of his claim against Ulico, and as part of this motion, Defendants Biddle and Ferraro seek to recover attorneys’ fees and costs expended in defense of the claims asserted by Plaintiffs in the principal action “the Action”]. Through December 31, 2003, Defendants Biddle and Ferraro have incurred approximately sixty thousand dollars (\$60,000.00) in attorneys’ fees and costs in defense of Plaintiffs’ claims. Time spent in defense of Plaintiffs’ claims includes consultation, preparation of pleadings, correspondence, and participation in discovery. All time spent has been reasonable and necessary and the billing rates at which the services were rendered were reasonable and competitive in the Buffalo legal community.

5. Accordingly, Defendants Biddle and Ferraro request that this Court enter an order requiring Ulico to reimburse Defendants Biddle and Ferraro for all attorneys’ fees and costs expended in his defense of the Action, requiring Ulico to provide Defendants Biddle and Ferraro with a defense of the claims brought by Plaintiffs in the Action, and to reimburse Defendants

Biddle and Ferraro for all damages incurred by them in the Action up to the limits of the applicable insurance policy.

6. Upon a determination by this Court that Ulico has an obligation to reimburse Defendants Biddle and Ferraro for attorneys' fees and costs incurred in defense of the Action, or at such earlier time as the Court may request, counsel for Defendants Biddle and Ferraro will provide to the Court (and to Ulico) detailed time logs and invoices, identifying each attorney or paralegal rendering the legal services, their billing rate at the time the service was rendered, the amount of time spent on a particular matter, the fee charged for the service identified and the disbursements made by counsel on behalf of Defendants Biddle and Ferraro.

WHEREFORE, Defendants/Third-Party Plaintiffs George Ferraro and James Biddle, Sr., respectfully request that this Court issue an Order: (1) denying Third-Party Defendant Ulico Casualty Company's motion for summary judgment, (2) granting Defendant/Third-Party Plaintiffs' cross-motion for summary judgment, (3) requiring Third-Party Defendant Ulico Casualty Company to provide Defendants/Third-Party Plaintiffs with a defense relative to the claims asserted by Plaintiffs Curtis Zamerski and Richard Kohl, and (4) granting such other and further relief that this Court deems just and proper.

s/R. Scott DeLuca
R. Scott DeLuca, Esq.

Subscribed and sworn to before me this
30th day of January, 2004.

s/Joanne M. Wagner
Notary Public

Joanne M. Wagner
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 10/31/2005

CERTIFICATE OF SERVICE

I, R. Scott DeLuca, Esq., certify that on the 30th day of January, 2004, a copy of the Affidavit of R. Scott DeLuca, Esq. in Support of Defendant/Third-Party Plaintiffs' Cross-Motion for Summary Judgment and in Opposition to Third-Party Defendant's Motion for Summary Judgment, was sent to counsel of record in this action, via first class mail, at the following addresses:

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s/R. Scott DeLuca
R. Scott DeLuca, Esq.